percent of whom are deemed civil servants with lifetime employment guarantees.[320]

France Télécom has turned to its neighboring telecommunications monopoly, Deutsche Telekom, in search of a partner to weather the torrent of competition as telecommunications becomes global. France Télécom and Deutsche Telekom intend to merge their data transmission and value-added services operations into one common venture called Atlas.[321] The pair also found an American complement to their European liaison. France Télécom, Deutsche Telekom, and Sprint have all entered into a formal agreement to form a global alliance. The two state-owned European telecommunications monopolies plan to pay a combined $4.1 billion for a 20 percent stake in Sprint.[322] Each of the three companies will own a third of a joint venture called Phoenix, which will provide end-to-end telecommunications services to large multinational corporations.[323] The three companies predict that Phoenix, in its first year of operations, would generate more than $500 million in revenue, employ more than 2,000 people, and offer service in over 50 countries.[324] They also say that the venture could be operational within 50 days of regulatory approval.[325]

The companies need the approval of the EC and the U.S. In the U.S., the venture must receive approval from both the Justice Department and the FCC. In July 1995, the Justice

320. *Id.*

321. CRANSTON, *supra* note 303, at 111.

322. Tony Jackson & Alan Cane, *Sprint signs deal with European partners*, FIN. TIMES, June 23, 1995, at 15.

323. *With Variations, Sprint Announces European Pact*, *supra* note 315, at B2.

324. Gautam Naik, *Sprint Signs $4.1 Billion Agreement With French, German Phone Carriers*, WALL ST. J., June 23, 1995, at B2.

325. *With Variations, Sprint Announces European Pact*, *supra* note 315, at B2.

Department gave Sprint approval to proceed with the alliance.[326] To gain this approval, Sprint entered into a consent decree to assure that the parties to the venture would not receive preferential treatment until the French and German telecommunications markets are opened to U.S. carriers.[327] The companies, however, may have a much harder time getting the requisite approval from the FCC and the EC. The FCC, in light of its call for a market reciprocity analysis in its 1995 notice of proposed rulemaking,[328] will not likely give approval without the French and German governments first making progress in the liberalization of their telecommunications markets. Also, Mr. Karel van Miert, EU competition commissioner, has expressed repeatedly that the EC will not approve a formal alliance between the French and German telecommunications operators until both countries take greater steps to liberalize their respective markets.[329] Van Miert has concerns that the dominant operators will foreclose any opportunity for the emergence of competition throughout the European telecommunications industry.[330] Deutsche Telekom, with $44 billion in annual revenue, is the second largest telecommunications operator in the world,[331] and the two Atlas partners already control 75 percent of their respective home markets.[332]

326. Leslie Cauley, *Sprint Alliance In Europe Receives Approval in U.S.*, WALL ST. J., July 14, 1995, at B3.

327. *Id.*

328. Market Entry and Regulation of Foreign-affiliated Entities, Notice of Proposed Rulemaking, IB Dkt. No. 95-22, 10 FCC Rcd 5256 (1995).

329. Alan Cane, *Telecom giant has problem getting through: Regulators could scuttle global alliance*, FIN. TIMES, July 28, 1995, at 2.

330. Emma Tucker, *Van Miert renews attack on Franco-German telecoms link*, FIN. TIMES, June 14, 1995, at 3.

331. *With Variations, Sprint Announces European Pact*, *supra* note 315, at B2.

332. Amelia Torres, *EU has hard time policing the telecoms market*, REUTER EUR. COMMUNITY REP., July 11, 1995.

Most analysts agree that the French and German markets will not likely be liberalized until the EU-stipulated deadline for competition in telecommunications of January 1, 1998,[333] but the French and German governments have a particularly strong interest in obtaining EU and FCC approval. The acquisition of an equity interest in Sprint and the creation of the Phoenix joint venture are two integral pieces of France Télécom and Deutsche Telekom's strategy in the all-important race to be an end-to-end provider of global communications services. Thus, it is likely that the two state-owned operators and their respective national governments will make certain concessions to move the alliance to completion.

Cable Television. France's cable industry is relatively undeveloped, and it is nearly completely French-owned. Even after the private sector was allowed to compete in the cable television industry in 1986, growth in subscribership has remained sluggish. France has one of the lowest cable television penetration rates in Europe.[334] In France there are only 1.5 million subscribers to cable, compared to about 15 million in Germany.[335] As of March 1995, French cable systems passed a total of 5,917,801 homes, while just 1,167,026 of those homes subscribed to the services—for a nationwide average penetration rate of 19.72 percent.[336] Three major French corporations own approximately 85 percent of all cable television franchises in the country: Lyonnaise des Eaux with 31 percent,

333. Jacson & Cane *Sprint signs deal with European partners*, *supra* note 322, at 15.

334. John Ridding, *France ponders superhighway gamble*, FIN. TIMES, Oct. 27, 1994, at 2.

335. John Ridding, *Cable TV battle goes underground: French utilities are jockeying for position in run-up to telecoms liberalisation*, FIN. TIMES, Jan. 18, 1995, at 2.

336. *French cable connects 19,000 more homes*, NEW MEDIA MARKETS, Apr. 6, 1995.

Compagnie Générale des Eaux (CGE) with 30 percent, and France Télécom with 23 percent.[337]

The French cable television industry is the legacy of the French government's attempt at centrally planning the buildout of the country's cable network and, subsequently, the government's partial adoption of private market forces to resuscitate a lagging effort. In 1982, the French government launched an ambitious initiative to develop broadband cable television networks throughout the country. The massive plan committed FFr25 billion to develop a nationwide state-of-the-art cable network.[338] Under the project, known as Plan Câble, France Télécom was given the responsibility for constructing and maintaining cable television networks and leasing them to publicly owned local operators.[339] Since 1982, France Télécom alone has spent FFr20 billion to develop cable television networks and has generated far too little revenue from the cable operations to recoup its investment.[340] France Télécom openly acknowledges that cross-subsidies from the state-owned operator's telecommunications businesses have kept cable networks operational.[341] After realizing the infeasibility of the centralized plan and that France Télécom could not earn a sufficient return on investment, the French government in 1986 allowed private companies to construct and own broadband cable networks.[342] Many French utilities entered the communications industry during the 1970s in attempt to diversify away from their traditional, low-margin businesses.[343] CGE and Lyonnaise des Eaux accepted the French government's offer in the mid-1980s to participate in

337. *Id.*

338. Ridding, *France ponders superhighway gamble*, *supra* note 334, at 2.

339. CRANSTON, *supra* note 303, at 109.

340. Kenneth Hart, *Duel to the death? Cable television industry in France*, COMM. INT'L, May 1994, at 7.

341. *Id.*

342. *Id.*

343. Ridding, *Cable TV battle goes underground*, *supra* note 335, at 2.

the cable industry—thereby relieving France Télécom of some of the burden of developing cable infrastructure—and have emerged as the two largest MSOs in France.[344]

In addition to the late introduction of market forces and outside investment, restrictive regulations have choked the growth of French cable systems. Cable operators sometimes, but not always, hold a monopoly in a given region. The Conseil Supérior de l'Audiovisuel licenses cable television operators, while the local municipal government chooses the cable television operator for its area.[345] It is up to the the municipal government to select one or more than one cable operator.[346]

France does not allow the provision of basic telephone services over the cable networks, and it will not allow such services before the 1998 market liberalization in accordance with the EU mandate.[347] The ability to provide telephony service is seen as critical to the sustained viability of the cable networks, and the promise of the increased revenue from the dual service is clearly the reason why the present cable operators are willing to continue to take losses year after year.

In addition to the inability of cable operators to provide cable telephony, the French cable industry has suffered from onerous content regulation. For example, French satellite, cable, and terrestrial television channels, as well as regional stations, may not show most feature films on Saturdays, or on Wednesdays and Fridays before 10:30 P.M., so that consumers will continue to go to movie theaters.[348] Cable channels, thus, cannot differentiate themselves from broadcast

344. CRANSTON, *supra* note 303, at 112.

345. *Id.* at 110.

346. *Id.*

347. *Operators believe only cable telephony can help*, NEW MEDIA MARKETS, Sept. 22, 1994.

348. Hart, *supra* note 340, at 7.

television by offering popular films or thematic programming.[349]

Also, under the controversial content-quota regulations, 40 percent of all audiovisual and radio broadcast programming must be of original French expression by January 1, 1996.[350] Broadcasters and cable television channels may fulfill these restrictions by 3 percent of their annual operating revenues on French films and another 15 to 18 percent for domestic audiovisual production.[351]

Until a recent industry consolidation, four MSOs dominated French cable television: CGE, Lyonnaise Communications, Com-Dev, and France Télécom.[352] Most French cable operators are losing money, but some predict a brighter future.[353] For example, Lyonnaise Communications, the cable subsidiary of Lyonnaise des Eaux, believes that it will break even by the end of 1995 and turn a profit by the end of 1996.[354] Com-Dev, however, has not fared as well as Lyonnaise. Com-Dev was France's third largest cable television operator.[355] As of February 1994, with nearly 320,000 subscribers, Com-Dev had 25 percent of the French cable market.[356] In 1993, Com-Dev lost nearly FFr440 million, and in 1994, the cable operator lost an estimated FFr300 million.[357] These financial straits recently prompted Com-Dev's owner to dispose of its cable operations. In January 1995,

349. *Id.*

350. *Id.*

351. *Id.*

352. CRANSTON, *supra* note 303, at 112.

353. *Operators believe only cable telephony can help*, *supra* note 347.

354. Ridding, *Cable TV battle goes underground: French utilities are jockeying for position in run-up to telecoms liberalisation*, *supra* note 335, at 2.

355. *Operators believe only cable telephony can help*, *supra* note 347.

356. William Mahoney, *French cable industry sees flurry of recent activity*, MULTICHANNEL NEWS, Feb. 14, 1994, at 3.

357. Ridding, *Cable TV battle goes underground: French utilities are jockeying for position in run-up to telecoms liberalisation*, *supra* note 335, at 2.

Caisse des Depots, the state investment institution, sold most of Com-Dev's cable operations to Lyonnaise des Eaux.[358] France Télécom purchased six of the company's twenty-two networks.[359]

After the parceling of Com-Dev, the respective market shares of the three largest cable network operators in France was as follows: Lyonnaise des Eaux increased its market share from 17.5 percent to just over 30 percent; CGE had nearly the same market share as Lyonnaise; and France Télécom was the third largest cable network operator—increasing its market share through the Com-Dev sale from 10 percent to 23 percent.[360]

Some of the large American MSOs and even an RBOC have begun to enter the struggling French cable industry, presumably with the anticipation that they will be able to provide telephony over their networks after 1998. Time Warner Cable and Comcast International formed a joint venture to build and operate cable systems in France.[361] The venture is called CiteReseau.[362] It hopes to amass a cable operation reaching from one to five million homes.[363] CiteReseau will target towns with populations between 10,000 and 50,000, for it has been in the medium-sized towns that cable operators in France have had the greatest degree of success.[364] The two companies intend to find a French partner not only to share in the necessary capital investment, but also to blunt criticism from those who fear a bastardization of French

358. *Id.*

359. *Id.*

360. *Id.*

361. William Mahoney, *French cable industry sees flurry of recent activity*, MULTICHANNEL NEWS, Feb. 14, 1994, at 3.

362. *Id.*

363. *Comcast joins bid for 100 franchises*, NEW MEDIA MARKETS, Feb. 10, 1994.

364. *Id.*

culture stemming from foreign participation in the French communications industry.[365]

Other American companies either already have acquired or plan to acquire interests in French cable operators. TCI and Lenfest have a 29 percent stake in Videopole.[366] As of October 1994, SBC planned to acquire a 10 percent stake in some of CGE's cable television properties.[367]

France Télécom has set up a division separate from its cable operations to pursue multimedia programming and services. France Télécom and Lyonnaise Communications have formed a multimedia joint venture called Multicable.[368] Its objective is to develop a multimedia pay-per-view system known as Multivision, and it began trials in Paris of interactive services delivered to homes via personal computers in July 1995.[369] Multicable offers various services including news, games, banking and financial services, information on education, travels, leisure activities, and Internet access.[370] According to Multicable, 41 percent of Paris homes that subscribe to cable television service have a personal computer, and 25 percent of those homes have a modem.[371]

Cellular. France has three mobile telephone service operators: France Télécom, Société Française du Radiotéléphonie (SFR), and Bouygues Telecom. All are majority-owned by French entities, and France Télécom, because of its control over net-

365. *Id.*

366. *Operators believe only cable telephony can help*, *supra* note 347; *Comcast joins bid for 100 franchises*, *supra* note 363.

367. *A Wireless Stake in France For SBC Communications*, N.Y. TIMES, Oct. 12, 1994, at D9.

368. *Interactive multimedia trial for Paris cable*, NEW MEDIA MARKETS, June 29, 1995.

369. *Id.*

370. *Lyonnaise des Eaux, France Télécom to begin multimedia cable trials in July*, AFX NEWS, June 28, 1995.

371. *Interactive multimedia trial for Paris cable*, NEW MEDIA MARKETS, June 29, 1995.

work capacity and interconnection charges, has established effective control over the entire French mobile telephone market. France Télécom and SFR operate both an analog cellular network and a digital GSM network. Bouygues Telecom received the third French wireless license on October 7, 1994.[372]

Like the French cable television industry, the French cellular telephony industry has not experienced the same market penetration that has occurred in the cellular markets of some of France's wealthier European neighbors. This lack of development is largely attributable to a lack of effective competition in the cellular market. With the introduction of a third wireless operator and the liberalization of certain infrastructure, the French cellular industry has begun to show signs of significant growth. By the end of January 1995, a total of 820,900 people subscribed to cellular service in France—480,100 to GSM, and 340,800 to analog.[373] Industry participants expect the total number of subscribers for mobile telephony services in France to reach 1.5 million by the end of 1995 and 6.6 million by 2000.[374] Competition has produced lower tariffs for mobile telephony.[375] Both France Télécom Mobile and SFR have repeatedly lowered the price of service.[376]

The French government has recently taken steps toward greater liberalization of its mobile telephony market. In February 1994, the DGPT granted SFR permission to build its

372. Gail Edmondson, *A Feeding Frenzy in European Telecom*, BUS. WK., Nov. 21, 1994, at 119.

373. *French GSM networks are two years from break-even point*, FINTECH MOBILE COMM., Mar. 23, 1995.

374. John Ridding, *Sleeping French market receives a wake-up call—The government is hoping that a third force will trigger stronger competition*, FIN. TIMES, Oct. 6. 1994, at 30.

375. *France Télécom tariffs*, FINTECH MOBILE COMM., June 29, 1995.

376. *French GSM networks are two years from break-even point*, *supra* note 373.

own trunk network links in certain areas.[377] In June 1994, in response to complaints from the SFR, the DGPT (then called the Direction de Reglementation Generale, or DRG) ordered France Télécom to reduce its charges for interconnection and the lease of lines.[378] Then, in May 1995, the DGPT authorized the railway company SNCF to use its telecommunications network to carry voice traffic for the two private mobile telephone operators, SFR and Bouygues Telecom.[379] The DGPT said that its decision was the first step to implement the right of the mobile services operators to use, for the construction of their own networks, leased lines of operators of independent networks.[380] Other potential alternative networks could be the cable television networks and the network owned by Electricite de France.[381]

Both France Télécom and SFR operate an analog network and a digital GSM network.[382] France Télécom Mobile launched the Itineris network in July 1992.[383] At the end of 1994, the Itineris network covered 90 percent of the French population.[384] France Télécom Mobile expects to have the Itineris network reach 95 percent of the population by the end of 1995.[385] As of March 1995, the Itineris GSM network had 386,000 subscribers.[386]

377. *Germany joins Europe's move to mobile infrastructure liberalisation*, FINTECH MOBILE COMM., Apr. 6, 1995.

378. CRANSTON, *supra* note 303, at 107.

379. *France okays "alternative" networks for mobiles*, REUTER EUR. COMMUNITY REP., May 17, 1995.

380. *Id.*

381. *Id.*

382. CRANSTON, *supra* note 303, at 107.

383. *French GSM networks are two years from break-even point*, *supra* note 373.

384. *Id.*

385. *Id.*

386. *Id.*

France Télécom's analog service—known as Radiocom 2000—had 276,000 subscribers as of March 1995,[387] but France Télécom has indicated its intention to phase out its analog service over time. Radiocom 2000 is already in decline. France Télécom reported in early 1995 that the analog service was losing about 10 percent of its subscriber base each month. France Télécom is maintaining the analog network, but is no longer actively developing or promoting the service.[388]

SFR launched its Numerique GSM network in December 1992.[389] At the end of 1994, SFR's Numerique digital network covered just 55 percent of the French population.[390] SFR is spending heavily to expand its digital network coverage to 85 percent by the end of 1995 and 95 percent by the end of 1996.[391] The SFR Numerique GSM service, with 93,798 subscribers as of March 1995, has about 20 percent of the digital cellular market.[392]

SFR was first granted a license by the French government in 1987 to operate an analog cellular service. As of March 1995, SFR Analogique had 144,135 subscribers.[393]

Since the initiation of its service, SFR has fought consistently with France Télécom over the latter's high charges for interconnection and leased network capacity. These high costs have inhibited SFR's ability to compete against France Télécom Mobile. By the end of 1993, SFR had captured only 30 percent of the analog cellular market and 12 percent of the digital market.[394] But with the favorable decisions of the DGPT to authorize infrastructure alternatives,

387. *Id.*
388. *Id.*
389. *Id.*
390. *Id.*
391. *Id.*
392. *Id.*
393. *Id.*
394. CRANSTON, *supra* note 303, at 107.

SFR will be able to better compete with France Télécom, as has been shown by SFR's increased share of the GSM market since the DGPT's two decisions in 1994.

The ownership of SFR has become a bit complicated. Compagnie Générale des Eaux (CGE), the large French utility, owns a controlling interest in the cellular operator. CGE owns most of its telecommunications assets through its subsidiary holding company, Cofira. As of October 1994, CGE owned 51.5 percent of Cofira.[395]

Others seeking an equity participation in the French telecommunications industry have acquired a stake in Cofira. Rebuffed in its attempts to secure a mobile telephone license, Alcatel Alsthom, in 1994, agreed to acquire a stake in SFR.[396] Alcatel purchased from Credit Lyonais, the unprofitable state-owned bank, its 19.9 percent interest in Cofira.[397] Alcatel's stake in Cofira will be held by General Occidental, Alcatel's media and communications subsidiary.[398]

In October 1994, Vodafone and SBC agreed to take an equity interest in CGE's telecommunications operations. For $626 million, SBC acquired a 22 percent in yet another CGE holding company, giving SBC a 10 percent stake in Cofira.[399]

Vodafone, which already held a 4 percent stake in Cofira, exchanged its indirect stake and took a 10 percent direct interest in SFR.[400] Vodafone has the option to double its investment within two years.[401]

395. John Chalmers, *France's Alcatel Targets Niche in Mobile Phone Market*, REUTER EUR. SMALL BUSINESS REP., Oct. 27, 1994.

396. *Id.*

397. *Alcatel-Alsthom, S.A.*, WALL ST. J., Dec. 9, 1994, at A13.

398. John Ridding, *Alcatel buys into mobile telephone operation*, FIN. TIMES, Dec. 8, 1994, at 33.

399. John Ridding, *Generale des Eaux in mobile phone accord*, FIN. TIMES, Oct. 12, 1994, at 31.

400. *Id.*

401. *A Wireless Stake in France For SBC Communications*, N.Y. TIMES, Oct. 12, 1994, at D9.

The SBC deal involves a cross-ownership arrangement that will give SBC access to CGE's cellular telephony and cable network operations in France while giving CGE an equity interest in certain SBC cellular franchises in the United States.[402] CGE will invest nearly $250 million for a 10 percent stake in SBC's cellular operations in the Washington-Baltimore area.[403]

In October 1994, the French government awarded Bouygues Telecom a license to operate as the nation's third mobile telecommunications provider.[404] The Bouygues consortium won the license despite strong competition from other groups led by French industrial giants, Alcatel Alsthom and Lyonnaise des Eaux.[405] Bouygues Telecom plans to invest FFr11.7 billion ($2.2 billion) over the next ten years to deploy its PCN system using the DCS-1800 standard. Bouygues expects to have 18.6 percent of the 6.6 million mobile telephony subscribers that it estimates will exist by 2000.[406] Under the terms of its fifteen-year license, Bouygues Telecom will be the only entity allowed to develop PCN services in France's five largest cities—Paris, Marseilles, Lyons, Nice, and Lille—for the next four years.[407] After four years, SFR and France Télécom Mobile will be permitted to construct and operate DCS-1800 networks in these five cities.[408] In regions other than those five metropolitan areas, SFR and France Télécom Mobile expect to be able to construct and operate PCN networks in 1997 or 1998, depending on when the

402. *Generale des Eaux in Cellular Phone Alliance With Vodafone and Southwestern Bell*, TECH EUR., Nov. 4, 1994.

403. *A Wireless Stake in France For SBC Communications*, *supra* note 401, at D9.

404. Ridding, *Sleeping French market receives a wake-up call—The government is hoping that a third force will trigger stronger competition*, *supra* note 374, at 30.

405. *Id.*

406. *Id.*

407. *Id.*

408. CRANSTON, *supra* note 303, at 108.

French military relinquishes its rights to use the frequencies.[409] The following companies have equity interests in the Bouygues consortium: Bouygues; Cable & Wireless; U S West; JC Decaux, the French real estate group; Banque Nationale de Paris; and Paribas.[410]

Telepoint. In France, a slightly different mobile telephony standard, known as "telepoint," has emerged as a less expensive alternative to cellular telephony. The system employs a technology known as CT2, transmitting digital shortwave radio frequencies between strategically placed terminals and the handsets. The range of a given handset is limited to within 200 meters of a terminal.[411] Telepoint handsets weigh just over six ounces and are powered by two AA batteries. A telepoint call is significantly less expensive than a cellular call but slightly more expensive than a conventional wire-based telephone call.[412]

France Télécom Mobile Pointel, a subsidiary of France Télécom, launched its telepoint service—known as Bi-Bop—in April 1993.[413] Pointel operates under a national license it received from the French government in 1991, but in no region will France Télécom hold a statutory monopoly.[414] As of the middle of 1995, Bi-Bop was available in Paris,

409. *Id.*

410. Ridding, *Sleeping French market receives a wake-up call—The government is hoping that a third force will trigger stronger competition, supra* note 374, at 30.

411. Todd Krieger, *Romancing the Bi-Bop: The French and Their Phone*, N.Y. TIMES, Apr. 23, 1995, at 49.

412. *Id.*

413. *Private telepoint operator to open second network in France*, FINTECH MOBILE COMM., Feb. 9, 1995.

414. *Id.*

Strasbourg, and Lille[415] and had attracted 80,000 subscribers.[416]

Prologos, a new private company, intends to provide telepoint service to complement that offered by the France Télécom subsidiary.[417] Prologos will offer telepoint services only in regions where Pointel does not. Prologos will operate as a holding company for a number of regional operating companies and hopes to attract additional capital for its ventures from local investors.[418] In May 1995, the DGPT granted Prologos a license to operate telepoint services in southwestern France.[419] Prologos plans to launch its service in October 1995.[420] The ownership of Prologos is as follows: a group of private individuals owns 51 percent; Dassault owns 34 percent; and Olivetti owns 15 percent.[421]

CGE, which already owns a cellular operator and multiple cable systems, is contemplating entering the telepoint market. Synergies might result from combining a telepoint network with CGE's many communications systems. CGE has conducted telepoint trials in Saint-Maur-des-Fosses, linking telepoint base stations using its local cable network.[422]

Italy

Until 1994, the Italian telecommunications industry was a confused collection of various state-owned telecommunications

415. *Second French telepoint operator gets licence, as Bi-Bop growth halts*, FINTECH MOBILE COMM., May 18, 1995.

416. *Private telepoint operator to open second network in France*, *supra* note 413.

417. *Id.*

418. *Id.*

419. *Second French telepoint operator gets licence, as Bi-Bop growth halts*, *supra* note 415.

420. *Private telepoint operator to open second network in France*, *supra* note 413.

421. *Id.*

422. CRANSTON, *supra* note 303, at 109.

operators, some providing overlapping services. But in that year, the government began transforming the industry to prepare for the advent of full competition in 1998. The government rationalized the industry structure and has planned for the full privatization of the consolidated, state-owned telecommunications operator.

The Italian market is critical for any telecommunications operator with global aspirations. Although Italy has a relatively mature telephony infrastructure, great opportunity exists in the emerging services, such as wireless and wire-based broadband. Italy is the world's sixth largest economy.[423] It has a population of fifty-seven million people, and a telephone density of 42.4 percent.[424] By the end of 1993, approximately 95 percent of all Italian families had telephones.[425] By the middle of 1994, 1.7 million people subscribed to cellular service, and growth in subscribership exceeded 50 percent per year.[426] Italy, however, has no cable television or any other form of wire-based broadband services.

Telephony. In 1994, Italy's government consolidated several telecommunications operators, each state-owned but independently managed. The government merged five telecommunications operators—in businesses ranging from telephony systems to manufacturing equipment to satellite communications—to form a single telecommunications operator, Telecom Italia, which generates revenues of $18 billion per year.[427]

423. BELL ATLANTIC CORP., 1994 ANNUAL REPORT 5 (1995).

424. STET—SOCIETA FINANZIARIA TELEFONICA P.A., ANNUAL REPORT 1993: REPORT ON THE YEAR'S ACTIVITIES 16 (1994) [hereinafter STET 1993 ANNUAL REPORT].

425. *Id.* at 26.

426. STET—SOCIETA FINANZIARIA TELEFONICA P.A., REPORT ON OPERATIONS: FIRST HALF OF 1994, at 11 (1994) [hereinafter STET 1994 REPORT ON OPERATIONS].

427. John Tagliabue, *Italy's Phone Monopoly Confronts a New World*, N.Y. TIMES, Mar. 27, 1995, at D5.

The five separate but interrelated companies performed different, but sometimes overlapping, services. SIP provided local, mobile, data, and some long-distance services. Iritel (formerly ASST) provided most domestic long-distance services and short-haul international services. Italcable provided long-haul international services. And Telespazio provided domestic and international satellite services.[428] Each company was either completely or partly owned by Stet.

In 1992, the Italian government took the first steps to transform Italy's telecommunications industry. In Law 58 of 1992, the government set forth the guidelines for the institutional reorganization of the entire telecommunications sector. Pursuant to these guidelines, in late June 1993, Istituto per la Ricostruzione Industriale SpA (IRI), the government-owned holding company, presented an executive plan for the reorganization that called for the creation of a single telecommunications service provider by consolidating SIP, Italcable, Telespazio, Iritel, and SIRM. In July 1994, the Ministry of Posts and Telecommunications confirmed that the IRI plan met the general criteria established under Law 58 of 1992, and specified that the reorganization should be completed by September 30, 1994.[429] The merger was structured as a purchase by SIP of the four other operators. The parties to the merger signed the agreement on July 27, 1994. The merger took effect on August 18, 1994, creating one Italian telecommunications operator, Telecom Italia SpA.[430] Telecom Italia has a monopoly on the provision of basic voice services and telecommunications infrastructure.[431] Its organizational structure is as follows. IRI owns 65 percent of Società Finanziaria Telefonica per Azioni (Stet), the telecommunications holding company.[432] Stet, in turn, owns 52.72 percent of the Telecom

428. CRANSTON, *supra* note 303, at 133.
429. STET 1993 ANNUAL REPORT, *supra* note 424, at 21.
430. STET 1994 REPORT ON OPERATIONS, *supra* note 426, at 22.
431. CRANSTON, *supra* note 303, at 130.
432. *Id.* at 132.

Italia, the consolidated telecommunications operator.[433] Private investors hold the remaining interests in both Stet and Telecom Italia.[434] Shares of the holding company and the operating company are listed on the Italian stock exchange.[435] The Italian government could achieve even greater simplicity in the structure of its telecommunications industry by consolidating Stet and Telecom Italia, but industry analysts say that a merger between Stet and Telecom Italia seems unlikely.[436]

Through consolidation, the Italian government made Telecom Italia the sixth largest telecommunications operator in the world.[437] It has a market value of $19 billion.[438] In 1994, Stet earned $1.25 billion on operating revenues of $21.2 billion.[439]

As part of broad campaign to privatize many of Italy's state-owned industries, and in culmination of its plan to transform its telecommunications sector, the Italian government will sell its interest in the now consolidated telecommunications company. The government intends to sell all or substantially all of four of the nation's largest companies: IMI, the merchant bank and insurance company; ENI, the state oil company; ENEL, the state electricity company; and Stet.[440] IMI has already completed the first phase of its privatization. And on May 10, 1995, the Italian government began prelimi-

433. STET 1994 REPORT ON OPERATIONS, *supra* note 426, at 22.

434. CRANSTON, *supra* note 303, at 132.

435. *Id.*

436. Andrew Hill, *Structure has been simplified—Andrew Hill says the telecoms industry has a difficult task ahead*, FIN. TIMES, Oct. 25, 1994, at 35.

437. Andrew Hill, *Rich mixture of a telephonic stew: A look at the muddled process of privatising and deregulating Italy's telecoms*, FIN. TIMES, Apr. 26, 1995, at 22.

438. J P MORGAN & CO., INC., 1994 SEC FORM 10-K, at 10 (1995).

439. Tagliabue, *supra* note 427, at D5.

440. Robert Graham, *Italy alters state sales agenda*, FIN. TIMES, May 17, 1995, at 2.

nary measures for the privatization of ENI, designating its offering as a priority.[441]

IRI will sell its 64 percent stake in Stet, which, with a market capitalization in late 1994 of $14.51 billion, is considered the jewel of the Italian state assets for sale.[442] IRI will conduct the sale after Stet divests the mobile telephony subsidiary and lists Stet shares on the New York Stock Exchange.[443] In early 1995, IRI Chairman Michele Tedeschi predicted that the Stet offering would begin by autumn 1995; but with the priority given to the ENI sale, the Stet sale will not likely occur until 1996.[444] In 1996, the Stet offering will have to compete with the first public offering for Deutsche Telekom.

Telecom Italia has announced grand plans for future infrastructure development, and because it already has a high level of debt, the company desperately needs the capital that will be raised through the Stet equity offering. As of 1995, Telecom Italia had financed nearly 60 percent of its investment with debt, and 40 percent with internal funds.[445] Stet is spending $5 billion per year to upgrade both its wire-based and cellular neworks.[446] Offering reassurance that its plans would neither undermine its financial position nor require new funds, Telecom Italia announced in late May 1995 that it planned to extend fiber-optic cable to ten million homes by 1998; expenditures will total between $7.15 and $7.75 billion between 1995 and 1998.[447]

The Ministry of Posts and Telecommunications ostensibly regulates the telecommunications industry in Italy but

441. *Id.*

442. *Morgan Stanley to Advise On Privatizing Stet SpA*, WALL ST. J., Oct. 31, 1994, at A11.

443. Andrew Hill, *IRI to sell its Stet stake by year-end*, FIN. TIMES, Feb. 23, 1995, at 37.

444. Graham, *supra* note 440, at 2.

445. Hill, *Structure has been simplified*, *supra* note 436, at 35.

446. Tagliabue, *supra* note 427, at D5.

447. Andrew Hill, *Telecom Italia to fund fibre-optic expansion*, FIN. TIMES, May 26, 1995, at 23.

lacks a firm regulatory framework,[448] and the government has not enforced strict European Union directives on liberalization. Proposed legislation to establish an independent regulator and a structured regulatory apparatus stalled in the Italian Parliament in 1995.[449] Thus challengers and the incumbent have resorted to initiating individual cases and proceedings before various ministerial committees, the courts, and government bodies such as the antitrust authority.[450]

On January 11, 1995, Italy's Autorità Garante della Concorrenze e del Mercato (the antitrust authority) ordered Telecom Italia to open specialized services to competition, in accordance with EU law.[451] In his first major decision as the new antitrust commissioner, former prime minister Giuliano Amato, ruled that Telecom Italia, in refusing to lease its lines to a private company, had abused its dominant position and broken EU rules on the liberalization of the telecommunications sector.[452] The antitrust authority decided that Telecom Italia must allow Telsystem, a small Milan company, to lease lines from the national operator so that Telsystem can provide virtual network services.[453] The antitrust authority's decisions, however, are not executable as law, and a petitioner must get a court order to support the decision.[454] Telecom Italia thus ignored the decision until the Tribunale Amministrativo del

448. CRANSTON, *supra* note 303, at 129.

449. MERRILL LYNCH, TELECOM ITALIA: MOBILE SPIN OFF TO ENHANCE VALUE 2 (June 26, 1995) [hereinafter MERRILL LYNCH TIM REPORT].

450. Andrew Hill, *Italian telecoms giant roars as tiny challenger scores a hit: Arguments over the rules are complicating a tough fight*, FIN. TIMES, Jan. 20, 1995, at 2.

451. *Id.*

452. *Italian Phone Ruling*, WALL ST. J., Jan. 12, 1995, at A11.

453. Andrew Hill, *Telecom Italia told to open up to competition*, FIN. TIMES, Jan. 12, 1995, at 2.

454. *Clamour Grows in Italy for Telecommunications Reform as Telecom Does What It Likes*, COMPUTERGRAM INT'L, June 29, 1995.

Lazio supported the antitrust authority's decision in March 1995.[455]

The role of an independent regulatory authority will be crucial to ensuring that Telecom Italia does not abuse its dominant position in the market after liberalization, particularly as Italy is proving slow to implement existing EU directives to open specialized telecoms services to competition.[456] As in any transforming market, the degree of regulatory certainty will significantly affect the level of private (particularly foreign) investment. Unlike the intended sale of Stet, which is expected to be heavily subscribed because of the opportunity to invest in an incumbent monopolist in a market with substantial growth potential, foreign telecommunications operators have been wary about making direct investment in Italy. Despite this reservation, some foreign companies have begun to enter the Italian market in preparation for the market opening in 1998.

BT has devised a two-pronged strategy to penetrate the Italian telephony market. In April 1995, BT announced that it had agreed with Banca Nacional del Lavoro to form a joint venture, called Albacom, to target the top 3,000 medium to large multi-site Italian companies, a market worth £1.7 billion in annual revenues.[457] The two companies will invest nearly £200 million between 1995 and 2005; BT will own 50.5 percent of the venture.[458] In July 1995, BT announced that it would begin offering virtual private network services to Italian businesses through Concert, BT's joint venture with MCI.[459]

In 1995, Bell Atlantic joined with the Italian computer company, Ing. C. Olivetti (Olivetti), to form Infostrada, a

455. *Id.*

456. Hill, *Structure has been simplified, supra* note 436, at 35.

457. Alan Cane, *A serious switch to the Continent: Alan Cane examines BT's multi-billion dollar link-up with telecoms operators prior to liberalisation*, FIN. TIMES, May 22, 1995, at 17.

458. *Id.*

459. *Telecommunications Pact*, N.Y. TIMES, July 10, 1995, at 8.

joint venture which will provide wire-based voice and data telecommunications services to business customers.[460] Already partners in Omnitel, the Italian wireless consortium, Bell Atlantic and Olivetti expect to acquire 10 percent of the $17.7 billion Italian telecommunications market by the end of 1997.[461] Olivetti owns 67 percent of the venture, and Bell Atlantic owns 33 percent.[462] The two companies seek an established European telecommunications operator as a third partner in the venture.[463] BT has been reported to be that partner.[464]

Cable Television and Telephony. Cable television is undeveloped in Italy, and no wire-based broadband networks exist.[465] Broadcast television, however, is very popular; Italy has six national broadcast channels, 831 local broadcast stations, and three pay-television channels.[466] Because cable operators are prohibited from providing telephony service (at least until 1998), there does not appear to be sufficient potential gain to entice operators to construct cable networks for the joint delivery of voice and video, as is occurring in the U.K..

In February 1991, the Italian government established a legal mechanism for licensing cable television systems operators. Companies can now obtain a 10-year local license or a 20-year national license.[467]

Bell Atlantic had planned to enter the nascent Italian multimedia market but reconsidered. Bell Atlantic entered into

460. *Bell Atlantic and Olivetti Team Up In Their Second Joint Venture in Italy*, DM NEWS, May 8, 1995, at 3.

461. *Id.*

462. *Olivetti sees 'well-established' European operator to take Infostrada stake*, AFX NEWS, July 4, 1995.

463. *Id.*

464. Andrew Hill, *Olivetti to split PC side from office products*, FIN. TIMES, July 10, 1995, at 20.

465. CRANSTON, *supra* note 303, at 132.

466. *Id.*

467. *Id.*

an agreement with Stet to acquire 49 percent of Stet's multimedia subsidiary, Stream. The joint venture was to develop video-on-demand and interactive multimedia television in Italy.[468] In 1995, Bell Atlantic withdrew from the venture.[469]

Wireless. The success of mobile telephony in Italy and its vast potential for continued expansion have made Italy one of Europe's most attractive telecommunications markets.[470] Italy is one of the fastest growing European wireless markets.[471] In 1993, Italy's cellular market grew by 50 percent, one of the highest growth rates in Europe.[472] During the first half of 1994, subscribership grew by 38 percent, and mobile telephony calling volume increased by 42 percent.[473] In that period, 70,000 to 80,000 new customers were subscribing to cellular service each month.[474] For the entire year of 1994, Italy was the fastest growing cellular market in Europe, with an 86 percent increase in the subscriber base to 2.4 million.[475] By the middle of 1995, the Italian cellular market had attracted 2.8 million subscribers—a penetration rate of 5 percent.[476] Industry executives expect the subscriber base to triple by 2000 to a penetration rate of 16.5 percent, growing to a penetration rate of 25 percent by 2004.[477] All of these cellular customers have subscribed to a service provided by Telecom

468. *Id.* at 135.

469. Andrew Hill, *US telecom group drops plans for Stet stake*, FIN. TIMES, May 19, 1995, at 24.

470. Hill, *Rich mixture of a telephonic stew: A look at the muddled process of privatising and deregulating Italy's telecoms*, *supra* note 437, at 22.

471. BELL ATLANTIC CORP., 1994 ANNUAL REPORT 5 (1995).

472. STET 1993 ANNUAL REPORT, *supra* note 424, at 16.

473. STET 1994 REPORT ON OPERATIONS, *supra* note 426, at 16.

474. Richard L. Hudson, *Italy's Olivetti Is Tapping Into Telecommunications: Company Builds Cellular Network, Plans On-Line Electronic Services*, WALL ST. J., July 29, 1994, at B4.

475. MERRILL LYNCH TIM REPORT, *supra* note 449, at 1.

476. *Id.*

477. *Id.* at 2.

Italia Mobile (TIM) because, thus far, it has been the only operator providing service.

TIM, formerly Telecom Italia's mobile services subsidiary, is Europe's leading mobile telephone service operator.[478] The company operates three cellular networks in Italy—two analog and one GSM system.[479] As of December 31, 1994, TIM served an estimated 2.2 million cellular subscribers, most on the company's analog networks.[480] In October 1993, the antitrust authority ordered SIP (now Telecom Italia) to cease actively marketing its GSM service until the government had issued a second GSM license and the licensee was ready to launch a rival service.[481]

As a condition precedent to the sale of IRI's stake in Stet, Telecom Italia spun off its mobile telephone subsidiary in July 1995.[482] In May 1995, Telecom Italia listed separate shares for TIM on the Italian stock exchange.[483] With a one-for-one distribution of TIM shares to all Telecom Italia shareholders, the "demerger" became effective July 14, 1995, and shares began trading on July 17, 1995.[484] The Italian Stock Exchange has valued the company at $6.56 billion.[485]

In March 1994, the Italian government selected the Omnitel-Pronto Italia consortium (Omnitel) as the recipient for the second national GSM license.[486] The government did not

478. STET 1994 REPORT ON OPERATIONS, *supra* note 426, at 11.

479. AIRTOUCH COMMUNICATIONS, INC., 1993 SEC FORM 10-K, at 16 (1994).

480. *Id.*

481. CRANSTON, *supra* note 303, at 131.

482. Andrew Hill, *Telecom Italia demerges mobile unit*, Mar. 21, 1995, at 27; Conner Middelmann, *SBC prepares for Telecom Italia demerger*, FIN. TIMES, Apr. 20, 1995, at 36..

483. *Italy Market Regulator Clears Listing of Telecom Italia*, AFX NEWS, May 18, 1995.

484. MERRILL LYNCH TIM REPORT, *supra* note 449, at 1.

485. *Id.*

486. AIRTOUCH COMMUNICATIONS, INC., 1994 SEC FORM 10-K, at 18 (1995).

formally award the license to the consortium for several months, so Omnitel did not begin infrastructure construction until late November 1994.[487] The consortium paid to the Italian government a license fee of Lira 750 billion (£304 million).[488] Omnitel expects to begin commercial service in October 1995.[489] The license conveys permission to operate a nationwide service.[490] Under the terms of the license, Omnitel's network must cover 40 percent of Italy's geographic area by May 1996.[491] The particular 40 percent of the country to which Omnitel will first provide service is home to two-thirds of the population.[492] Omnitel expects to have one million customers and over $1 billion in revenue within three to four years from the start of service.[493]

To achieve its high goals for penetration in the digital GSM cellular market, Omnitel will have to overcome the large head start granted to its only competitor. TIM formally launched its GSM service on April 1, 1995.[494] Omnitel challenged the launch, complaining that it gave TIM an unfair

487. Andrew Hill, *Telecom Italia seeks to pay government less*, FIN. TIMES, Dec. 1, 1994, at 3.

488. John Simkins & Robert Graham, *Olivetti bid wins Italian telecom license*, FIN. TIMES, Mar. 29, 1994, at 2.

489. MERRILL LYNCH TIM REPORT, *supra* note 449, at 2.

490. AIRTOUCH COMMUNICATIONS, INC., 1994 ANNUAL REPORT 63 (1995).

491. AIRTOUCH COMMUNICATIONS, INC., 1993 SEC FORM 10-K, at 16 (1994).

492. AIRTOUCH COMMUNICATIONS, INC., 1994 ANNUAL REPORT 63 (1995).

493. Richard L. Hudson, *Italy's Olivetti Is Tapping Into Telecommunications: Company Builds Cellular Network, Plans On-Line Electronic Services*, WALL ST. J., July 29, 1994, at B4.

494. Andrew Hill, *Omnitel keeps powder dry in phones battle—The group is intent on building a robust network before launch*, FIN. TIMES, Feb. 14, 1995, at 22.